

TONTO HILLS DOMESTIC WATER IMPROVEMENT DISTRICT

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March 16, 2011

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

**Docket Control**

Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

Arizona Corporation Commission

**DOCKETED**

MAR 28 2011

W-20653A-09-0064  
Re: Docket No. W-02483A-09-0064  
Decision No. 71319

DOCKETED BY	<i>MM</i>
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Gentlemen:

In compliance with the subject OPINION AND ORDER I am enclosing thirteen copies of the final Contract and Bill of Sale, executed by Tonto Hills Utility Company and the Tonto Hills Domestic Water Improvement District.

Please advise that this is satisfactory and confirm receipt of this letter.

Regards,

Tonto Hills Domestic Water Improvement District

By Charles Civer, Board of Directors member

## AGREEMENT FOR SALE

THIS AGREEMENT dated as of December 14<sup>th</sup>, 2009 by and between Tonto Hills Domestic Water Improvement District, an Arizona special improvement district with offices located at 42265 Old Mine Road, Cave Creek, Arizona 85331 ("THDWID" or "Buyer"), and Tonto Hills Utility Company, an Arizona corporation with offices located at 11802 Blue Wash, Cave Creek, Arizona 85331 ("THUC" or "Seller"), is for the acquisition by the Buyer of the physical assets, certain contract assets and certain real property of the Seller ("Agreement").

WHEREAS, Seller is engaged in the business of the ownership and operation of a water transmission, storage and distribution system;

WHEREAS, the water system of Seller, hereinafter referred to as the "Physical Assets" consists of the connection to the delivery output hub of the City of Scottsdale water system within the Desert Mountain boundaries and the storage and distribution system. The system consists of the following principal elements:

1. A 2 ½ inch water line connecting the water storage tank to the City of Scottsdale supply hub.
2. The water storage tank, all steel, enclosed, approximately 64,000 gallons, including its hydraulic-operated fill-control valve.
3. The system of water lines, comprised of approximately 6000 feet of 6 inch diameter asbestos-concrete pipe (ACP); 20,000 feet of 4 inch ACP; 8000 feet of 2 inch poly-vinyl chloride (PVC) pipe; and 300 feet of 2 inch PVC pipe.
4. Thirty-three below-grade shutoff valves.
5. Fourteen standpipes with 2 inch threaded, standard fire hose connection hubs.
6. One hundred twenty-seven customer water meters (126 5/8 inch and one 1 inch), vaults and PVC connections to water mains.
7. Supplies, spare parts, meters and any other items in Seller's possession that are part of the system.

WHEREAS, Seller also has ownership of certain real estate located in Maricopa County Arizona, consisting of: a vacant land lot tax parcel #219-12-115, Tonto Hills Lot 115 ; and tax parcel #219-12-225, Tonto Hills Lot 225; and a waterline easement, granted by Desert Mountain Properties Limited Partnership to THUC, which is more particularly described in Exhibit A (all collectively the "Real Property"); and

WHEREAS, Seller also has certain Contract rights, collectively referred to herein as "Contracts", which includes the following:

1. Contract 1999-135-COS between the City of Scottsdale ("COS") and THUC;
2. Subcontract 07-XX-30-W0491 between THUC and the Central Arizona Water Conservation District (CAWCD); and
3. A U.S. Forest Service Lease; and

WHEREAS, Buyer desires to acquire from Seller and Seller desires to sell to Purchaser, the Physical Assets, the Real Property, the Contracts, personal property and all other Assets as defined herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Buyer and Seller hereby agree as follows:

**Section I. Definitions.** The capitalized words used in the above-referenced Recitals and used below shall have the following meanings:

**Assets:** Collectively, all tangible and intangible assets including, without limitation, all Physical Assets, Real Property, Contracts, Records, Equipment, those funds only in the Meter Deposit Account and all other contractual and leasehold rights, water rights, service area rights and franchise rights and right of way use or encroachment permits used in or related to the operation of Seller's water system, all of which shall be conveyed to Buyer at Closing.

**Assignments:** Those certain documents assigning to Buyer from Seller certain of the Assets, including without limitation the Contracts, that easement described hereinabove under the Real Property, and the franchise rights granted Seller by Maricopa County for the use of County right of way for a domestic water distribution system.

**Closing:** The date on which all of the conditions for payment set forth in Sections 3 and 4 have been satisfied.

**Conditions to Closing:** Those conditions as outlined in Sections 3 and 4 of this Agreement which must occur prior to December 31, 2009, but which shall be extended to June 30, 2010 by THUC as Seller upon signing this agreement. Buyer and Seller agree that in the event all governmental approvals and financing are not obtained by June 30, 2010, Seller may grant additional extensions at the request of the Buyer as are reasonably necessary to obtain such approvals and financing.

**Equipment:** The tangible personal property, whether affixed or not to the Real Property, which has been acquired or is under lease with Seller for use primarily in the operation of the utility facilities.

**Letter of Intent:** That letter signed by Buyer and Seller dated May 9, 2008, which memorializes the intentions of the parties as to this sale transaction. This Agreement supersedes the Letter of Intent in its entirety.

**Meter Deposit Liabilities:** Buyer's obligation to refund to customers those refundable meter deposits of Seller being assumed by Buyer. Buyer does not assume any other liabilities of Seller.

**Meter Deposit Account:** The customer refundable meter deposit account balance of Seller, the sum of which shall be conveyed to THDWID by THUC prior to Closing along with the schedule of remaining annual credits due for each of the individual customers which shall be provided to THWID by THUC, 5 days prior to Closing.

**Opening of Escrow:** The date upon which a fully executed copy of this Agreement is delivered to the Escrow Agent.

**Permitted Encumbrances:** Any matters of record with respect to the Real Property which are reflected on the Title Commitment as defined herein and any other matters approved by Buyer in its sole discretion. Notwithstanding anything to the contrary contained herein, on or before the Closing, Seller shall, at its sole cost and expense, fully pay, discharge and cause to be released, any mortgages, deeds of trust, installment land contracts, judgments, or other monetary liens (except for any taxes or assessments which are to be pro-rated at Closing) affecting or purporting to affect title to the Assets.

**Records:** All of Seller's service agreements, any and all other agreements, service, maintenance and repair records, water treatment records, contracts, hydrology and assured water supply studies and reports, Department of Water Resources filings and correspondence, Department of Environmental Quality filings and correspondence, customer data base information (if any), maps of current configuration, drawings, specifications, records of modifications, operating history documentation, copies of real property deeds and records, guaranties and warranties, hard copy and digital accounting records and any other non-privileged documents arising out of or relating to the utility facilities and the Assets.

**Title Commitment:** The title commitment attached to this Agreement for Sale as Exhibit C, and any amendments thereto, issued by the Title Insurer showing the status of title and committing to issue the Title Policy or Policies insuring Buyer's interest in the Real Property.

**Title Insurer:** North American Title Company, 36800 N. Sidewinder Rd., Carefree, Arizona 85377.

**Title Policy:** That Title Policy issued by Title Insurer with respect to the Real Property.

**Transfer Instruments:** Shall mean the following instruments:

- (i) Special Warranty Deed to the Real Property, in the form set forth in Exhibit E (the "Special Warranty Deed");
- (ii) Foreign Investment Real Property Tax Act of 1980 statement (FIRPTA);
- (iii) Bill of Sale for Contracts, Records, Equipment and other Physical Assets, including service area rights in the form annexed hereto as Exhibit D; and
- (iv) Assignments of agreements, easements and other rights as applicable.

**WIFA Debt:** That debt owed by Seller to the Arizona Water Infrastructure Finance Authority ("WIFA"). Prior to Closing that debt shall be current as to repayment installments and there shall be no Seller default conditions.

**Section 2. Conveyance of Assets.** Subject to the conditions and limitations set forth herein, Seller hereby agrees to sell and Buyer hereby agrees to purchase the Assets for the Purchase Price as defined herein.

**2.1 Real Property:** The Real Property shall be conveyed at the Closing by the execution and delivery by Seller of a Special Warranty Deed in the form attached hereto as Exhibit B and an assignment of easement in form reasonably satisfactory to the parties. Seller shall preserve title to the Real Property and, at the time of Closing, shall deliver the Real Property in as good or better condition with respect to title as of the date of the Title Commitment. At Seller's expense, Escrow Agent shall furnish Buyer a standard coverage owner's policy of title insurance in the amount of \$150,000, effective as of the date of Closing insuring Buyer that fee simple title to the Real Property is vested in Buyer.

**2.2 Limitations.** The purchase of the Assets pursuant hereto shall not render Buyer a successor-in-interest to Seller. Buyer is not assuming any liabilities of Seller with respect to the Assets that may exist at any time prior to their transfer hereunder unless otherwise specifically set forth herein. Buyer shall have no obligation of any kind under any contract or obligation of Seller unless expressly approved and assumed by Buyer.

**2.3 Inspection of Materials.** No later than 15 days prior to Closing, Seller shall make available to Buyer for inspection and copying at the offices of Seller all records pertaining to the Assets and operation and maintenance of THUC.

**Section 3. Purchase Price.** Subject to satisfactory completion of the conditions cited herein, Buyer agrees to pay Seller as the Purchase Price for Seller's interest in the Assets the sum of \$442,000.00, plus the amount of the WIFA Debt that is current and owed by Seller at Closing (the "Purchase Price"). The Purchase Price shall

be paid by Buyer into Escrow by wire transfer, cash or cashier's check drawn on a local federally insured bank or savings and loan association made payable to Escrow Agent. The entire Purchase Price will be disbursed to Seller at Closing, less any amounts to be paid by Seller hereunder, provided that Seller has satisfied all of the following conditions and any additional conditions under Section 4 hereof have been satisfied:

- 3.1 Seller has delivered to Escrow Agent originals of all of the Transfer Instruments satisfactory to Buyer, fully executed by Seller, transferring all of the Assets to Buyer.
- 3.2 Seller has delivered to Escrow Agent a copy of an Arizona Corporation Commission ("ACC") order approving the sale of the Assets consistent with this Agreement and cancellation of Seller's CC&N.
- 3.3 All liens, debts and other monetary obligations with respect to the Assets have been paid in full by Seller at or prior to Closing.
- 3.4 THUC's Customer Refundable Meter Deposit Account balance shall be conveyed to the Escrow Agent for the benefit of THDWID prior to or at Closing and shall be released to Buyer upon Closing. Each customer's individual balance in the account is to be refunded to the appropriate customers after Closing by Buyer in annual credits of 10% until fully refunded. The schedule of remaining annual credits due for each customer shall be provided to Buyer before closing.
- 3.5 Seller has satisfied all other obligations of Seller under this Agreement.

**Section 4. Approvals and Conditions to Closing.** The Parties' respective obligations to proceed with the Closing under this Agreement are contingent upon Seller obtaining the necessary approval of the Arizona Corporation Commission for the sale of the Assets to Buyer and cancellation of Seller's CC&N, (the "Regulatory Approvals") and Buyer receiving financing approval from its property owners and WIFA, and obtaining the approval of the City of Scottsdale and the Central Arizona Project of the assignment to Buyer of Seller's water-related Contracts with those entities. If any of the foregoing conditions cannot be satisfied, then either party may terminate this Agreement by written notice to the other party and Escrow Agent, this Agreement shall thereupon terminate, and neither party shall have any further obligation or liability under this Agreement.

- 4.1 Seller shall, at no cost to Buyer, diligently pursue the Regulatory Approvals and Buyer shall cooperate in all reasonable respects, at no cost to Buyer, with Seller's attempt to obtain the Regulatory Approvals.

- 4.2 Buyer shall, at no cost to Seller, diligently pursue the financing approvals and the approvals of the City of Scottsdale and Central Arizona Project and Seller shall cooperate in all reasonable respects, at no cost to Seller, with Buyer's efforts.

**Section 5. Representations and Warranties.** Seller makes the following covenants, representations and warranties as of the date of this Agreement and as of Closing, and acknowledges that Buyer is relying thereon in entering into and Closing this Agreement:

5.1.1 **Title.** Seller is the owner of, and has good and marketable title to all Assets to be conveyed hereunder and acknowledges this Agreement constitutes the valid and binding obligation of Seller.

5.1.2 **Disclosed Agreements.** Except for this Agreement, Seller has entered into no agreement currently in effect to sell the Assets.

5.1.3 **Liabilities.** Seller specifically warrants to Buyer that as of the Closing, there shall be no liabilities in the form of judgments, liens, actions or proceedings pending against Seller or any of the Assets which would adversely affect this transaction or the title which Buyer will receive.

5.1.4 **Liens.** No judgments, liens, security interests, or other monetary obligations or encumbrances against any of the Assets will be outstanding and unpaid at the time of Closing, except for current real estate taxes which are not yet due and payable.

5.1.5 **Labor, Materials.** All the bills and invoices for labor and materials furnished to or on behalf of the Assets which have been incurred by Seller prior to the time of conveyance and transfer to Buyer, if any, will be paid in full by Seller prior to or at the time of Closing.

5.1.6 **Proceedings.** Other than the existing ACC hearings related to the transfer of the Assets as provided herein, there are no actions that might materially and adversely affect the Assets.

5.1.7 **No Breach.** Neither the execution nor delivery of this Agreement nor the consummation of the transaction contemplated by this Agreement will result in a breach or default by Seller under any agreement or which would have an effect upon Seller's ability to fully perform its obligations under this Agreement.

5.1.8 **No Bankruptcy.** Seller has not (a) made a general assignment for the benefit of creditors (b) filed any voluntary petition or suffered the filing of an involuntary petition by Seller's creditors, (c) suffered the appointment of a receiver to take all, or

substantially all, of Seller's assets, (d) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets or (e) admitted in writing its inability to pay their debts as they fall due, and no such action is threatened or contemplated.

**5.1.9 Regulations.** To the best of Seller's knowledge, there are currently no violations of any applicable zoning regulation or ordinance or other law, order, ordinance, rule, regulation or requirement, or of any covenant, condition or restriction affecting or relating to the use or occupancy of the Real Property or operation of Physical Assets.

**5.1.10 Permits.** Seller has any and all permits, licenses and approvals required by law or any governmental agency to operate the Assets as a water utility. Seller will have prior to Closing all approvals required by law or any governmental agency necessary to consummate this transaction.

**5.1.11 Condemnation.** There are no pending or threatened condemnation or eminent domain proceedings which would affect the Real Property.

**5.1.12 Creditors.** As of the Closing (except for items to be prorated at Closing pursuant to this Agreement): all bills and invoices for goods and services related to or which are a part of the Assets conveyed at Closing shall be paid; all Creditors shall be paid; all employees (if any) and salaries, wages, bonuses, vacation pay, and benefits accrued up to the date of Closing shall be paid; all withholdings, payroll taxes, unemployment insurance, worker's compensation benefits, and all other similar payments shall be paid current to the date of Closing. Excepted are fees due COS and CAWCD by THUC for water deliveries up to the date of Closing. The amount of such fees shall be determined by THDWID and THUC from the billings which will be received from COS and CAWCD after the end of the month of Closing and THUC shall immediately pay THDWID its share of total billed fees.

**5.1.13 Organization.** Seller has the full right and authority to enter into this Agreement, to consummate the sale contemplated herein and to observe and perform all of its covenants and obligations hereunder. The person executing this Agreement and any other document required hereby has full authority to act on behalf of and to bind the Seller in and to the obligations imposed by this Agreement.

**5.1.14 Commissions / Line Extension Agreements.** Seller has made no agreements respecting commissions or brokerage fees in connection herewith. Seller shall indemnify Buyer for any claims of commission based upon any alleged agreement by Seller to pay a commission. Seller has not entered into any line extension agreement or main extension agreement however denominated, with developers within the certified area.

**5.1.15 Arizona Department of Water Resources ("ADWR").** To the best of Seller's knowledge, Seller is not in violation of any water conservation or per capita use

limitations adopted by ADWR under the Management Plans of the Phoenix Active Management Area.

**5.1.16 Environmental Regulations.** To the best of Seller's knowledge, the Assets to be conveyed hereunder are in compliance with all current applicable environmental, health and safety laws and regulations. There are no environmental contamination or other conditions on, in, under or from any of the Real Property that require cleanup or other response under any applicable law relating to the protection of human health or the environment. Seller shall indemnify Buyer from any damages or loss resulting from Seller's violation of Federal, State or local environmental regulations; including Seller's use of hazardous substances.

**5.1.17 Insurance Coverage.** Seller carries, and has for the four years immediately preceding the date of this Agreement carried, what Seller believes to be a commercially reasonable liability insurance policy. Such insurance shall be maintained in full force and effect through Closing.

**5.1.18 Corporation Commission Filings.** To the best of Seller's knowledge, there are no material inaccuracies in the ACC Annual Reports filed by Seller.

**5.1.19 Employees.** Seller has no employees and Buyer shall have no obligations to any person by virtue of an employer/employee relationship formed by Seller.

**5.1.20 Sufficiency and Adequacy.** To the best of Seller's knowledge, the water storage tank is located within the Real Property to be conveyed to Buyer hereunder, and the Assets to be conveyed to Buyer hereunder are adequate and sufficient to permit Buyer to operate the water utility facilities. Buyer may, at its option and expense, have a survey conducted of the water tank site. In the event that the water tank is not located within the Real Property then Buyer will give Seller 30 days to remedy the Buyer's objection. Failure of Seller to respond shall be deemed an election by Seller not to attempt to remedy this objection. Buyer then may, at its option, (i) cancel this agreement or (ii) waive this objection.

**5.1.21 Accuracy of Representations and Warranties.** No representation and warranty of Seller contains or will contain any untrue statements of a material fact, or omits or will omit or misstate a material fact necessary in order to make the statements contained herein not misleading.

**5.1.22 Preservation of Assets.** Seller agrees to maintain the condition of the Assets in their current condition, ordinary wear excepted, to the date of Closing.

**5.1.23 Seller's Authority.** To the best of Seller's knowledge, Seller is not prohibited from consummating the transaction contemplated in this Agreement by any law, regulation, agreement, restriction, order or judgment. All shareholders of Seller

have read this Agreement, and concur with Seller's actions and obligations pertaining thereto.

**5.1.24 The Tank.** With reference to Section 5.8 of the Preliminary Engineering Report by Arizona Engineering Company (PER) dated April 3, 2008, Seller specifically represents and warrants that it has sandblasted and applied a new epoxy coating to the tank after repairing the entire tank. Buyer has had the right to periodic inspections as Buyer has deemed necessary. Should Buyer and Seller not agree as to the application of "industry standards" prior to Closing, an independent engineer shall be mutually selected who will make the final recommendation.

**5.1.25 Pipe Replacements.** Seller represents and warrants that it has replaced, at Seller's costs, the sections of potable water pipe on Blue Wash Road and Tonto Road at the two intersections of Blue Wash Road with La Plata and Tonto Roads. This replacement completed the potable water pipe loops at these intersections.

**5.1.26 WIFA Loan.** Seller represents and warrants that it either has, or it will, prior to Closing, pay off its WIFA loan, and any other debt or liens secured by the Assets.

**5.1.27 Sound Management of Seller.** Seller represents and warrants to Buyer that it has operated in a prudent and consistent manner in the past three years of its activities, including acquiring sufficient CAP capacity to serve property owners. Seller warrants that it will immediately notify Buyer in the event of any occurrence of any Adverse Event, as defined in this Agreement. Seller warrants that it will, until Closing, grant Buyer and/or its designee, access to Seller's books and records and permission to continue evaluating Seller's operations upon reasonable notice from Buyer.

**5.1.28 Letter of Intent Dated May 9, 2008.** Seller represents and warrants that it has met all of the terms and conditions of that Letter of Intent executed with Buyer on May 9, 2008.

The foregoing representations and warranties shall survive the Closing for a period of one (1) year and thereafter shall lapse, except with respect to any breach of such warranties and representations with respect to which Buyer has commenced an action against Seller prior to the expiration of such one (1) year period.

## **Section 6. Indemnification.**

**6.1** Seller shall indemnify and hold harmless Buyer, its officers, directors, agents and employees from and against claims or expenses, including penalties and assessments and attorney's fees to which they or any of them may be subjected by reason of injury or death of any person, or loss or damage to any property contributed to or caused by the active or passive negligence or willful misconduct of Seller, their agents, servants, employees, contractors, or subcontractors in the execution of Seller's obligations under this agreement or in connection therewith. In case any suit or other

proceeding shall be brought on account of Seller's action or inaction, Seller will assume the defense at Seller's own expense and will pay all adverse judgments rendered therein.

6.2 Buyer shall indemnify and hold harmless Seller, their officers, directors, members, agents and employees from and against claims or expenses, including penalties and assessments and attorney's fees to which they or any of them may be subjected by reason of injury or death of any person, or loss or damage to any property contributed to or caused by the active or passive negligence or willful misconduct of Buyer, its agents, servants, employees, contractors, or subcontractors in the execution of Buyer's obligations under this Agreement or in connection therewith. In case any suit or other proceeding shall be brought on account of Buyer's action or inaction, Buyer will assume the defense at Buyer's own expense and will pay all adverse judgments rendered therein.

6.3 The provisions of Paragraphs 6.1 and 6.2 shall survive the Closing and any termination of this Agreement.

#### **Section 7. Escrow Agent.**

7.1 Delivery of Transfer Instruments. The Transfer Instruments and any other documents required by this Agreement or applicable laws shall be placed by the parties into escrow with the Escrow Agent who shall deliver same to the appropriate party and/or shall record such Instruments at the Closing, as required.

7.2 Other. This Agreement shall also constitute joint escrow instructions by Buyer and Seller to North American Title Company ("Escrow Agent"). If required by Escrow Agent, the parties shall execute printed escrow instructions in the standard form utilized by Escrow Agent, containing the modifications required by this paragraph and such other modifications as are mutually acceptable to Buyer, Seller, and Escrow Agent (the "Printed Instructions"). If there is any conflict between the terms of this Agreement and the terms of the Printed Instructions, the terms of this Agreement shall prevail.

**Section 8. Closing.** The closing of this sale ("Closing") shall take place when all of the conditions for payment contained in Sections 3 and 4 have been fully satisfied or waived in writing, at which time Escrow Agent shall disburse to Seller the Purchase Price, and shall deliver to Buyer those funds and documents described in Section 3 that appropriately go to Buyer. Buyer and Seller shall provide to Escrow Agent such further instruments or documents as shall be found necessary to effectuate the intent of the parties hereto. Costs of Closing and/or expenses connected with the transfer of the Assets and the sale thereof shall be divided between Buyer and Seller, and paid through escrow, as follows:

8.1 Attorney Fees. Each party shall pay their own attorneys' fees and costs.

8.2 Escrow Fees. The escrow fee and all filing and recording fees shall be divided equally between Buyer and Seller, to the extent that such recording fee or filing fees are for the Transfer Instruments. If any recording fee or filing fees are necessary as a result of recordings required to clear title, they shall be paid by Seller.

8.3 Title Insurance. Seller will provide title insurance for all the THUC real estate Assets at Seller's cost.

8.4 Regulatory Approvals. Seller shall pay all necessary costs and fees incurred in obtaining the Approvals of the Arizona Corporation Commission.

8.6 Taxes. All taxes and assessments will be pro-rated and paid by the Seller as of the date of Closing.

8.7 Assessments. All assessments, both principal and interest, against the Real Property and personal property, shall be brought current by Seller through the Closing. Seller shall pay any delinquent amounts on or before Closing.

8.8 Acquisition Costs. Buyer and Seller will each bear their own costs in connection with the transaction contemplated in this Agreement.

**Section 9. Risk of Loss.**

9.1 Prior to Closing. Subject to the following provisions, Seller shall bear the risk of all loss, destruction or damage to the Assets or any portion thereof from any and all causes whatsoever up to and including the date and time of Closing. In the event there is any loss, destruction or damage to the Assets prior to the Closing, Seller shall fully restore the Assets at least ten (10) business days prior to Close of Escrow.

9.2 After Closing. The risk of loss or damage by fire or other casualty, or the taking by eminent domain, shall be assumed by and be the responsibility of Buyer from and after the Closing.

9.3 Insurance. Buyer shall place its own insurance coverage on the Assets as of Closing. Seller's insurance shall be canceled by Seller as of Closing with respect to occurrences after Closing.

**Section 10. Adverse Events.** The following events constitute Adverse Events that entitle Buyer, at its option, to withdraw from completion of this transaction:

- 10.1 Loss or adverse modification of any rights pursuant to those existing rights and contracts pertaining to the Assets;
- 10.2 THUC water distribution infrastructure problem reducing or eliminating delivery of water or degrading water quality to any THUC customers for more than 48 hours;

- 10.3 Notice by any governmental agency of a problem with THUC operations, water system or water quality;
- 10.4 Assertion of a claim, assessment or lawsuit against THUC or potentially impairing THUC assets; or
- 10.5 Any filing or threat of filing litigation against Buyer regarding THDWID formation or encumbering THDWID properties.

## **Section 11. Seller's Default.**

### **11.1 Seller's Default.**

11.1.1 Remedies. In the event of a default by Seller, Buyer's remedies shall be as follows. Buyer's remedies under this Agreement and applicable law shall be cumulative and not exclusive:

11.1.4.1 In the event the default continues uncured for a period of ten (10) business days after written notice thereof from Buyer to Seller and Escrow Agent, Buyer may elect in writing to terminate this Agreement by giving written notice thereof to Seller and Escrow Agent, or waive the default and close this transaction. In the event Buyer elects to terminate this Agreement, this Agreement shall thereupon be null and void. If Buyer elects to waive the default and close the transaction, then Closing shall occur within ten (10) business days after Buyer's written notice to close.

11.1.4.2 In the event of a default that can be cured by Seller's proceeds from the Closing, the Escrow Agent is hereby instructed to withhold from Seller's proceeds from the Closing a sufficient amount of proceeds and to apply them to cure the default.

11.1.4.3 In the event that Seller willfully refuses to Close this Agreement after Buyer has satisfied all of Buyer's conditions to Closing, then Buyer shall be entitled to pursue its legal and equitable remedies as they may be available at law, including specific performance.

11.2 Buyer's Default. If Buyer fails to timely perform any act required to be performed by Buyer on or before the Closing, or in any other way defaults under this Agreement, and such failure continues uncured for a period of ten (10) Business days after written notice thereof from Seller to Buyer and Escrow Agent, Seller's sole and exclusive remedies shall be:

11.2.1 To waive or not waive such default and close escrow; and/or

11.2.2 To terminate this Agreement by written notice to Seller, in which event Seller shall have no further obligation hereunder.

## **Section 12. Miscellaneous Provisions.**

**12.1 Notices.** Any notice, request, demand or other communication (collectively referred to as "Notice") required or permitted to be given pursuant to this Agreement shall be in writing and shall be personally delivered or sent by a nationally recognized overnight carrier or by certified and/or registered mail, return receipt request, postage prepaid, to the parties at the addresses listed in this Agreement. Notice will be deemed given and received on the earliest of (a) when actually delivered; (b) on the first Business Day after deposit with an overnight air courier service; or (c) on the third business day after deposit in the United States mail, postage prepaid. Any Notice which is returned or unable to be delivered because of a changed address for which no timely notice was given, or because acceptance is refused, shall be deemed given and received on the date when it is returned or unable to be delivered, or on the date when acceptance is refused. Any party may designate a change of address; provided however, that no change of address will be effective until written notice thereof is actually received by the party to whom such address change is sent. Any voice telephone numbers or e-mail address provided in this Agreement are for aiding informal communications only, and Notice shall not be effective if provided orally or if sent only by e-mail.

**12.2.1 Agreement Negotiated.** The terms and provisions of this Agreement represent the results of negotiations between Seller and Buyer, each of which has been represented by counsel of their own choosing and none of which have acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Seller and Buyer hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of the Agreement, including (without limitation) any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the party whose attorney prepared the executed draft or any earlier draft thereof. The Rule of Strict Construction shall not be used to interpret this Agreement, but rather this Agreement shall be construed to provide each party with the benefit of the bargain it has struck with the other party.

**12.2.2 Integration.** All understanding and agreement heretofore between the parties are merged into this Agreement which alone fully and completely expresses their agreement; the same is entered into after full investigation and neither party is relying upon any statements or representations by the other not embodied in this Agreement.

**12.2.3. Other Inducements.** The parties agree that there are no promises, inducements, representations or agreements in connection with this Agreement except those specifically set forth herein in writing.

**12.2.4 Modification.** This Agreement may not be changed orally, but only by an agreement in writing, signed by the parties.

12.2.5. Other Agreements. Seller shall not enter into any contracts, leases, agreements, or amendments to existing agreements, or encumbrances affecting the Assets while this Agreement remains in force without the express written consent of Buyer, other than to carry out the terms of this Agreement and/or to remove a matter which the Title Insurer requires be removed to close and/or which will be released or terminated on or before the Closing.

12.3 Relation of Parties. It is expressly agreed and understood by the parties hereto that neither party is the agent, partner, or a joint venture partner of the other. It is also expressly agreed and understood that neither Seller nor Buyer has any obligations or duties to the other except as specifically provided for in this Agreement.

12.4 Attorneys' Fees. In the event any party hereto finds it necessary to bring an action at law or other proceeding against the other party to enforce or interpret any of the terms, covenants, or conditions hereof or any instrument executed in pursuance of this Agreement, or by reason of any breach hereunder, the party prevailing in any such action or other proceedings shall be paid all costs and reasonable attorneys' fees by the defaulting party, and in the event any judgment is secured by such prevailing party, all such costs and attorneys' fees shall be included in any such judgment.

12.5 Mediation. Any claim or dispute of any kind between Buyer and Seller shall be submitted to mediation prior to commencing a lawsuit. If Buyer or Seller commences a lawsuit without first seeking to resolve the claim or dispute through mediation, or fails to participate in mediation requested by the other party, then if such party is successful in the lawsuit, such party shall not be entitled to recover its attorney's fees even if otherwise available to such party.

12.6 Time. Time is of the essence of this Agreement. The time for performance of any obligation or the time for taking any action under this Agreement shall be deemed to expire at 5:00 o'clock P.M. (Arizona time) on the last day of the applicable time period provided for herein. In computing any period of time prescribed herein, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. As used in this Agreement, the term "day(s)" shall mean a calendar day(s); and the term "Business Day(s)" shall mean a day(s) other than a Saturday, Sunday or a legal holiday as recognized in the State of Arizona.

12.7 Headings. The headings of this Agreement have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

12.8 Adverbs. Whenever the terms "herein", "hereunder", "hereof", "therefor", "thereover", or similar terms are used, they shall refer to this entire Agreement as a whole and shall not refer solely to any particular section.

12.9 Exhibits. All recitals, schedules, exhibits and appendices to this Agreement are fully incorporated herein as though set forth at length herein.

12.10 State Law. This Agreement and the conveyance provided for herein shall be governed by the laws of the State of Arizona.

12.11 Counterparts. This Agreement may be executed in several counterparts, and when all are so executed and delivered, they shall constitute one Agreement, binding on all of the parties hereto notwithstanding that all are not signatories to the original or same counterpart.

12.12 Foreign Investment. Seller shall fully comply with all applicable State and Federal laws governing foreign investment, including the Foreign Investment in Real Property Tax Act and Section 1445 of the Internal Revenue Code, as amended from time to time, and shall hold Buyer harmless from any claim or action arising therefrom.

12.13 Force Majeure. The term "Force Majeure" as used herein shall mean causes beyond the control and without the fault or negligence of the party failing to perform, whether foreseen or unforeseen, including, but not limited to: Acts of God, acts of the public enemy, wars, insurrections, civil unrest, riots, terrorism, labor disputes, boycotts, fires, explosions, floods, unanticipated adverse geological and weather conditions, acts of judicial or military authorities, acts of governmental authorities, inability to obtain necessary permits, licenses, and governmental approvals after applying for same with reasonable diligence. Except as provided herein with respect to Buyer's remedies for Adverse Events, neither party will be liable to the other nor may any party declare a default or enforce remedies against a party by reason of any delay or non-performance of their obligations under this Agreement in the event and to the extent that such delay or non-performance is caused by any event of Force Majeure. Each party will inform the other party of the occurrence of any event of Force Majeure, its expected duration and cessation, respectively, as soon as reasonably practical.

DATED this 14th day of December, 2009.

**BUYER:**

TONTO HILLS DOMESTIC WATER  
IMPROVEMENT DISTRICT

By: 

Its: CHARLES RIVER  
Board of Directors Member

Address: 42265 No. Old Mine Rd

Cave Creek, AZ 85331

**SELLER:**

TONTO HILLS UTILITY COMPANY

By: C. Dunning  
CHARLES DUNNING

Its: PRESIDENT

Address:

11802 E. BLUE WASH RD

CAVE CREEK, AZ 85331

ALL APPENDICES TO COME

ADDENDUM TO AGREEMENT FOR SALE BETWEEN  
TONTO HILLS DOMESTIC WATER DISTRICT AND  
TONTO HILLS UTILITY COMPANY

Section I. Definitions. Conditions to Closing: is hereby modified to extend the conditions to closing to no later than December 31, 2010.

DATED this 30th day of June 2010.

BUYER:

TONTO HILLS DOMESTIC WATER IMPROVEMENT DISTRICT

By: Charles Cive

Its: Board Member

Address:

42265 No. Old Mine Rd  
Cave Creek, AZ 85331

SELLER:

TONTO HILLS UTILITY COMPANY

By: CD Dunning

Its: PRESIDENT

Address:

11426 E. COTTONTAIL RD  
CAVE CREEK, AZ 85331

**AMENDMENT TO AGREEMENT FOR SALE  
DATED DECEMBER 14, 2009  
BETWEEN TONTO HILLS DOMESTIC WATER IMPROVEMENT DISTRICT (THDWID)  
AND TONTO HILLS UTILITY COMPANY (THUC)**

Section 3.4 shall be modified to provide that the customer refundable meter deposit account balance shall be conveyed to THDWID by THUC within five (5) days close of escrow.

Dated this 10<sup>th</sup> day of December 2010.

BUYER:

Tonto Hills Domestic Water Improvement District

By: 

Its: Board Member

Seller:

Tonto Hills Utility Company

By: 

Its: PRESIDENT

**AGREEMENT BETWEEN TONTO HILLS UTILITY COMPANY (THUC)  
AND TONTO HILLS DOMESTIC WATER IMPROVEMENT DISTRICT (THDWID)**

THUC hereby assigns all of its interest in that certain franchise granted by Maricopa County, which allows the use of County roadways within Tonto Hills for water distribution lines. THUC will promptly execute a form of assignment upon request by THDWID.

Dated this 13<sup>th</sup> day of December 2010.

**BUYER:**

TONTO HILLS DOMESTIC WATER IMPROVEMENT DISTRICT

By: 

Its: Board Member

**SELLER:**

TONTO HILLS UTILITY COMPANY

By: 

Its: PRESIDENT

## BILL OF SALE

This BILL OF SALE , dated as of December 17, 2010, is by and among Tonto Hills Utility Company (Seller), and Tonto Hills Domestic Water Improvement District (Buyer).

## RECITALS

A. Seller and Buyer are parties to a Agreement For Sale, dated December 14, 2009, pursuant to which, among other things, Buyer has agreed to purchase certain assets of Seller upon the terms and conditions specified therein.

B. This Agreement is being executed and delivered in order to affect the transfer to Buyer of such assets as set forth in the Purchase Agreement.

## AGREEMENTS

In consideration of the premises and the mutual covenants and agreements set forth in the Purchase Agreement, the parties hereby agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement and not otherwise defined herein shall have the meaning ascribed thereto in the Purchase Agreement.

2. **Sale of Assets.** Seller, in accordance with and subject to the terms of the Purchase Agreement, hereby sells, conveys, assigns, transfers and delivers to Buyer, and Buyer, in accordance with and subject to the Purchase Agreement, hereby purchases and acquires from Seller, all of Seller's right, title and interest of every kind and nature, in and to the Personal Property, described on Exhibit "A" attached hereto. FURTHERMORE, Seller warrants that he, she or they are the lawful owner of said personal property and hereby certifies, under oath, that he, she or they have good right to sell the same as aforesaid, and that the above described property is free and clear of all claims, liens and other encumbrances whatsoever, EXCEPT, as specified herein. Seller further agrees to warrant and defend same against the lawful claims and demands of all persons whomsoever.

3. **Counterparts.** This Agreement is executed pursuant to the Agreement For Sale and may be executed in two counterparts, each of which as so executed shall be deemed to be an original but both of which together shall constitute one and the same instrument. A facsimile signature shall be acceptable as an original for all purposes.

4. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon Buyer and Seller, and their respective successors and assigns, but shall not create any right of subrogation or other right on the part of any other person.

5. **Amendment, Waiver or Termination.** This Agreement cannot be amended, waived or terminated except by a writing signed by the parties hereto.

6. **Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA.

IN WITNESS WHEREOF, Buyer and Seller have caused this Bill of Sale to be executed individually or in their respective corporate names by their respective proper officers thereunto duly authorized, as of the date first written above.

Read and approved as to form and content this December 17, 2010.

SELLER:  
Tonto Hills Utility Company

By: *Charles Dunning*  
Charles Dunning  
Its: President

BUYER:  
Tonto Hills Domestic Water Improvement  
District

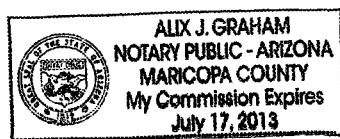
By: *Charles Civer*  
Charles Civer  
Its: Board Member

#### ACKNOWLEDGEMENT

STATE OF ARIZONA  
County of MARICOPA

On 12/17/10 before me, the undersigned a Notary Public in and for said County and State, personally appeared Charles Dunning, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



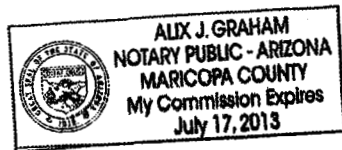
Signature *[Signature]*

My Commission expires: 7/17/2013

STATE OF ARIZONA  
County of MARICOPA

On 12/17/10 before me, the undersigned a Notary Public in and for said County and State, personally appeared Charles Civer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature

My Commission expires:


  
7/17/2013

EXHIBIT A to BILL OF SALE  
Between THUC and THDWID

WHEREAS, the water system of Seller, hereinafter referred to as the "Physical Assets" consists of the connection to the delivery output hub of the City of Scottsdale water system within the Desert Mountain boundaries and the storage and distribution system. The system consists of the following principal elements:

1. A 2 ½ inch water line connecting the water storage tank to the City of Scottsdale supply hub.
2. The water storage tank, all steel, enclosed, approximately 64,000 gallons, including its hydraulic-operated fill-control valve.
3. The system of water lines, comprised of approximately 6000 feet of 6 inch diameter asbestos-concrete pipe (ACP); 20,000 feet of 4 inch ACP; 8000 feet of 2 inch poly-vinyl chloride (PVC) pipe; and 300 feet of 2 inch PVC pipe.
4. Thirty-three below-grade shutoff valves.
5. Fourteen standpipes with 2 inch threaded, standard fire hose connection hubs.
6. One hundred twenty-seven customer water meters (126 5/8 inch and one 1 inch), vaults and PVC connections to water mains.
7. Supplies, spare parts, meters and any other items in Seller's possession that are part of the system.

WHEREAS, Seller also has certain Contract rights, collectively referred to herein as "Contracts", which includes the following:

1. Contract 1999-135-COS between the City of Scottsdale ("COS") and THUC;
2. Subcontract 07-XX-30-W0491 between THUC and the Central Arizona Water Conservation District (CAWCD); and
3. A U.S. Forest Service Lease; and